

October 27, 2009



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Dear Friend,

At a time when the attention of the American people is focused on how the decisions in Washington will affect their health care, two very different approaches to the issue have emerged. On the one hand there are those who seek to expand the role of government with what has euphemistically been characterized as a "public option."

By contrast, there are those of us who are highly skeptical of the expansion of government control over the nation's health care system when it has demonstrated an inability to manage its own finances even before the adoption of health care legislation. At a time when government has mismanaged the \$700 billion Troubled Asset Relief Program and decimated automobile dealerships across the country with its regulation of the domestic auto industry, skepticism regarding government regulation of health care is justified.

There is another way. Instead of looking at the growth of government as the only solution for every problem, attention should be focused on what government can do to knock down barriers to competition. This is of particular relevance in light of the fact that many such barriers are in fact the creation of government itself. There is no better example of this than the current restrictions on the purchase of health insurance. Under current law, as a resident of California, you are prohibited from purchasing health insurance from companies which operate outside the physical borders of the state. Even if you find a policy which contains the coverage you want at a more attractive price than that available to you within our state, you are barred from exercising your rights as a consumer to make the choice that is most advantageous to you and your family.

Competition is the guiding principle in other areas of our economic life and there is no reason why it shouldn't apply to the purchase of health insurance as well. It is for that reason that I cosponsored the [Health Care Choice Act](#) (H.R. 3217). This legislation would remove the current restrictions on the interstate purchase of health insurance. It would substitute the notion of consumer sovereignty for the misguided idea that state sovereignty should dictate the choices available to you in one of the most important

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decisions facing American families.

In this same context I have been working to increase competition in the insurance industry in my capacity as a member of the House Judiciary Committee. **At a time when we should be exploring all means of reducing the cost of health care, we should start by looking at what Congress has done in the past that may be contributing to the problem** In this regard, the Congress passed the McCarran-Ferguson Act in 1945 in response to a ruling by the United States Supreme Court in *U.S. v. South-Eastern Underwriters Association* which held that insurance contracts are a part of interstate commerce and thus subject to Congressional regulation. A key element of the Act provided that where state regulation existed, the Federal anti-trust laws would not apply to "the business of insurance." As a consequence, courts have been forced to dismiss cases involving allegations of price-fixing or other types of collusion.

It is my belief that more competition rather than more government is necessary to reduce the costs of health care which led me to vote in favor of the [Health Insurance Antitrust Enforcement Act of 2009](#) (H.R. 3596) in our Judiciary Committee mark-up. **This legislation will repeal the anti-trust exemption for health insurance and medical malpractice insurance in cases where insurers engage in price fixing, bid rigging, or market allocation which acts to the detriment of consumers.**

The impact of the McCarran-Ferguson Act on competition in the insurance industry is an issue on which I have worked since the 1980s. It was on this basis I had concerns that the original language in H.R. 3596 needed changes to ensure that it would not inadvertently prohibit agreements to share historical cost data. As the General Accounting Office discussed in a 2005 report this could potentially have an adverse impact on smaller insurance companies who depend on the aggregation of historical cost data to price their products. The last thing we would want to do is to add to the number of insolvencies among smaller insurance companies and end up with a more highly concentrated insurance market.

Accordingly, I offered an amendment to H.R. 3596 which would allow agreements concerning the compilation of historical loss data as long as it would not constitute a restraint of trade. My amendment was adopted by the House Judiciary Committee and the result is what I believe to be an important step toward achieving greater competition within the insurance industry. It is now imperative for the House Leadership to allow consideration of the other necessary component to the creation of a competitive health insurance marketplace. A vote must be allowed on the Health Care Choice Act to tear down the barriers to interstate competition and to provide more choice for Americans.

Rather than reflexively assuming that government is the solution to every problem let's shift our focus to a paradigm of competition.

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Sincerely,



Daniel E. Lungren
Member of Congress

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